

---

## Confirm Roberts

IT WILL BE A DAMNING INDICTMENT of petty partisanship in Washington if an overwhelming majority of the Senate does not vote to confirm John G. Roberts Jr. to be the next chief justice of the United States. As last week's confirmation hearings made clear, Roberts is an exceptionally qualified nominee, well within the mainstream of American legal thought, who deserves broad bipartisan support. If a majority of Democrats in the Senate vote against Roberts, they will reveal themselves as nothing more than self-defeating obstructionists.

Most Democrats have not indicated how they will vote later this week in the Judiciary Committee, or subsequently on the Senate floor. The angst expressed by some senators who feel caught between the pressure of liberal interest groups and their own impression of Roberts is comically overwrought. "I for one have woken up in the middle of the night thinking about it, being unsure how to vote," said Sen. Charles E. Schumer (D-N.Y.).

One reason Democratic senators are struggling to reach a verdict on the Roberts nomination is that President Bush has yet to announce his nominee for the second vacancy on the court. They are trying to figure out how their vote on Roberts will influence Bush's next choice. This is silly; Roberts ought to be considered on his own merits. But even if one treats this vote merely as a tactical game, voting against an impressive, relatively moderate nominee hardly strengthens the Democrats' leverage. If Roberts fails to win their support, Bush may justifiably conclude that he needn't even bother trying to find a justice palatable to the center. And if Bush next nominates someone who is genuinely unacceptable to most Americans, it will be harder for Democrats to point that out if they cry wolf over Roberts.

Roberts is, admittedly, no William Brennan. But Democrats' hopes to remake the court in his image died (or should have) the day after Bush was reelected. Senate Democrats need to exercise their advise-and-consent duty within this context.

Indeed, given Bush's own past statements about admiration for justices such as Antonin Scalia and Clarence Thomas, Roberts may be the best nominee liberals can expect out of this administration. He is in the tradition of Justices William H. Rehnquist and Anthony Kennedy, conservatives who believe in the value of stability and restraint. In his confirmation hearings, Roberts repeatedly distanced himself from an extreme "originalist" or literal approach to constitutional interpretation. He may have dodged plenty of questions, as do all judicial nominees, but he said plenty that was revealing and reassuring.

Roberts acknowledged that he believes there is a right to privacy, that many constitutional principles such as "liberty" and "due process" evolve over time and that justices must be mindful of how destabilizing it is to reverse prior decisions. He is no radical activist determined to take the court back to the early 20th century. Democrats, including California's Dianne Feinstein, should back Roberts or risk the consequences of voting against an acceptable nominee.

---